

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD COLLINS	:	CIVIL ACTION
	:	
vs.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO.: 16-cv-5671

PLAINTIFF'S PRETRIAL MEMORANDUM

Pursuant to Federal Rule of Civil Procedure 16.1 plaintiff hereby submits the following Pretrial Memorandum:

A. JURISDICTION

This action is brought pursuant to 42 U.S.C.A. §§ 1983 and 1988 and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C.A. §§ 1331 and 1343. Plaintiff further invokes the pendent jurisdiction of this Court to hear and decide claims arising under the law of the Commonwealth of Pennsylvania pursuant to 28 United States Code Section 1376(a) to hear and decide claims under state law.

B. CONCISE SUMMARY OF THE CASE:

On March 23, 2013 at approximately 7:55 p.m., plaintiff, Richard Collins was sitting in his car at 7500 Torresdale Avenue, Philadelphia, PA attempting to make a phone call to Crystal Hannah for directions to her house. Plaintiff's Deposition Transcript, p. 34. While attempting to make the telephone call, a police vehicle, a Ford Explorer passed the plaintiff's car, made a U-turn and came back towards the plaintiff's car with the spot light shining on plaintiff's face. The officers got out of the police vehicle approached his car and one the police officers (defendant,

Sergeant Edward Pisarek) placed his hand on the plaintiff's chest and asked him why he was his heart beating so fast. The plaintiff told him because he was nervous because he was on state parole. Suddenly, plaintiff's car was surrounded by marked and unmarked police vehicles. Plaintiff's Deposition Transcript, pp. 34-36.

The plaintiff was pulled from his vehicle and held by his hands behind his back by defendant officer Michael Berkery without explanation. Sergeant Pisarik then whistled to Berkery while making a circular motion with his finger and Berkery handcuffed the plaintiff. Pisarik then approached the plaintiff, pointed at him and told him that he robbed three people before and that he knows the plaintiff did this robbery. The plaintiff denied committing any robbery and told the officer he was just at the bank and has hot coffee in his car and the receipts are in his car. Plaintiff's Deposition Transcript, pp. 36-38.

The police searched the plaintiff's car but he didn't see them remove anything. Meanwhile they had him cuffed and sitting in a Ford Explorer. Later, they pulled him out of the Ford Explorer and sat him on a curb. Another Ford Explorer came to where he was and the police, two on each side of him, pulled him up and walked him towards the Explorer to be identified by the owner of the store that was robbed. After a couple minutes, the Asian owner (a cross-racial identification) identified him as the robber. Plaintiff's Deposition Transcript, pp. 38-39.

At the time of the plaintiff's arrest he was wearing a grey hoodie, jeans and blue Nike sneakers. See the 75-229, Biographical Information Sheet.

Approximately twelve minutes before the plaintiff was accosted by the police, a gun point robbery took place at the Red Sun Food Market located at 4552 Cottman Avenue. The

owner, Xiu Mei Xiao, who was working the register at the time described the perpetrator as a white male with a beard wearing a tan coat. Xiu Mei Xiao's interview, p.2.

According to Police Officer Apostolou the flash information, which came from the complainant, Xiu Mei Xiao indicated a white male wearing tan coat with fur around the hood, armed with a black gun. Detective Scott's Deposition Transcript, p. 45-48.

According to Police Officer Michael Berkery the flash information indicated a white male, approximately six feet, green eyes, black jacket with fur on the hood and blue jeans. See the Philadelphia Police Interview, 75-483 and Detective Scott's Deposition Transcript, pp. 29-30. However, this flash information is different from the Philadelphia Police Department Vehicle or Pedestrian Investigative Report prepared by Police Officer Michael Berkery, which indicates the flash information was grey hoodie, black jacket with fur on hood and blue jeans. See Philadelphia Police Department vehicle or Pedestrian Investigative Report and the flash information was grey hoodie, black jacket with fur on hood and blue jeans. Sergeant Edward Pisarik's Deposition Transcript, p. 8. **Police Officer Berkery made up the flash information he put into the Philadelphia Police Department Vehicle or Pedestrian Investigative Report to fit what the plaintiff was wearing.**

The robbery of the store was captured on video, which Sergeant Pisarik watched before his deposition and admits that because the perpetrator was wearing a parka you could not see if he was wearing a grey hoodie under the parka. Sergeant Edward Pisarik's Deposition Transcript, p. 14. **There was never any flash information regarding a grey hoodie until Officer Berkery made it up in order to create probable cause to stop the plaintiff.**

The Philadelphia Police Department Vehicle or Pedestrian Investigative Report indicates that the type of stop of plaintiff was a pedestrian stop. However, this was not the case, the

plaintiff was in a motor vehicle. Sergeant Pisarik and Officer Berkery could only see the plaintiff from the shoulders up and could not see what he was wearing. Sergeant Edward Pisarik's Deposition Transcript, p. 8. Sergeant Pisarik testified that they approached the plaintiff because he ducked down in his car. He also admitted that other white males were being stopped. Sergeant Edward Pisarik's Deposition Transcript, pp. 8-10.

C. WITNESSES:

Plaintiff, Richard Collins (liability and damages);
Defendant, Philadelphia Police Officer, Michael Berkery (liability and damages);
Defendant, Philadelphia Police Sargeant Edward Pisarek (liability and damages);
Philadelphia Police Officer Apostolous, Badge #: 7142 (liability);
Philadelphia Police Detective, Keith Scott (liability);
Xiu Mei Xiao (liability);
Elizabeth Wojtusik, plaintiff's girlfriend (damages); and
ADA John Risier (liability).

D. DOCUMENTS:

PARS Report;
Philadelphia Police Department Complaint or Incident Reports, 75-48;
Investigation Interview Record 75-483 of Xiu Mei Xiao, 75-483;
Investigation Interview Record 75-483 of Philadelphia Police Officer Apostolous, Badge #: 7142;
Investigation Interview Record 75-483 of Philadelphia Police Officer Anthony Manes, Badge H: 2211;
Philadelphia Police Department Vehicle or Pedestrian Investigation Report;

Philadelphia Property Receipt H: 3090992, 3090993, 3090994, 3088458, 3088459;

Crime Scene Log, 75-616;

Crime Scene Information, 75-616; Biographical Information Report; Photographs and video of the crime scene and evidence obtained;

PNC bank receipts;

Plaintiff's phone records;

Bill of Information for Docket No.: CP-51-CR-0000531-2014;

Docket Report Number: Commonwealth v. Collins, CP-51-CR-0000531-2014;

Affidavit of Elizabeth Wojtusik;

Records from SCI Dallas;

Records of Collins v. Philadelphia Soft Pretzel Factory, WCAIS claim #: 371283; and

Deposition transcripts of Plaintiff, Philadelphia Police Detective, Keith Scott and Defendant, Philadelphia Police Sergeant Edward Pisarek.

E. DAMAGES:

Compensatory damages including legal fees and costs for plaintiff's defense of the criminal action; loss of full settlement value of Worker's Compensation Claim;

Pain and suffering; Plaintiff was detained in SCI Dallas for approximately one year following his arrest;

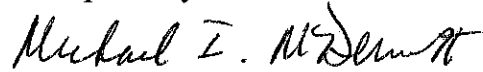
Punitive damages; and

Attorney's fees and costs.

F. length of Trial:

4 days.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Michael I. McDermott". The signature is fluid and cursive, with a stylized "M" and "D".

Michael I. McDermott, Esquire

Identification No.: 52917

Attorney for Plaintiff

1026 Winter Street, Suite 200

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(215) 925-9732

Date: June 24, 2017

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

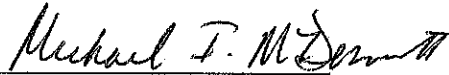
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PROOF OF SERVICE

I hereby certify that on June 24, 2014, a copy of the foregoing was filed electronically. Notice of the filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the court's system:

Service by electronic filing to:

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Assistant City Solicitor
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Date: June 24, 2017